PUBLIC PROSECUTOR

v.

MUSTAPHA BIN ABDULLAH

HIGH COURT MALAYA, KUALA LUMPUR
DATO' K.C. VOHRAH J
[CRIMINAL REVIEW NO: 43-7-96]
4 JUNE 1996

CRIMINAL LAW: *Penal Code, s. 324 - Voluntarily causing hurt with dangerous weapon - Gravity and rampancy of such offence.*

CRIMINAL PROCEDURE: *Sentence - Adequacy of sentence - No custodial sentence imposed - Merely fined - Whether manifestly inadequate - Whether sentence reflects gravity and rampancy of offence - Public interest - Whether objectives of sentencing realised.*

The respondent was charged with an offence under s. 324 of the Penal Code for voluntarily injuring a motorist on the road. At the material time the victim had stopped her motorcar near a fruit stall at Jalan Besar, Setapak, Kuala Lumpur and her elder sister, the complainant, alighted from the car to purchase some fruits. The respondent who was riding a motorcycle stopped behind the car and hooted several times. The victim then moved her car slightly forward but the respondent was still not satisfied and an altercation ensued between the complainant and the respondent. At this juncture the respondent tried to take a knife to attack the complainant but he was stopped by members of the public. Thereupon he returned to his motorcycle and took out an iron chain to hit the complainant. The victim, seeing this, went to her aid and it was during this time that the respondent hit the victim's back and pushed her down on the road and fled. Consequently, the victim received outpatient treatment for abrasions on the back of her neck and left scapula. The following day the respondent was arrested and the iron chain, about 2 1/2 feet long, used in the attack, was surrended by him to the police. At the Magistrates' Court he pleaded guilty and was fined RM2,000 in default four months imprisonment. Having read about the case in a local newspaper, the learned High Court Judge, pursuant to s. 323 of the Criminal Procedure Code, called for a revision of the record of proceedings to determine the adequacy of the sentence imposed by the learned Magistrate.

Held:

[1] The respondent was very aggressive and violent in response to a trivial dispute relating to some traffic obstruction on the road. His extreme aggressiveness was shown by his having attempted to take a knife and use it on the complainant which but for the timely intervention of the crowd would have probably resulted in the complainant suffering serious injury.

Exemplary sentences should be meted out to such offenders so as to deter such brutish behaviour by motorists on the road.

[2] The fine imposed by the learned Magistrate was manifestly inadequate. There is hardly a week that passes by without reports of violent attacks by aggressive road users on other road users. As such, in order to do substantial justice in this case a fine of RM2,000 is not a suitable punishment. Having taken into account all the mitigating and aggravating factors, a sentence of four months imprisonment should be an appropriate one.

Per Curiam:

[1] Courts can take judicial notice that cases of aggression on our roads, most of the time over trivial matters, have become far too frequent. Defenceless victims in addition to being terrorised are brutally punched, kicked, knocked about, or attacked with lethal instruments by bullies. The present state of affairs calls for a strong and firm handling by our Courts of these bullies so that clear signals are sent out that the dangerous and obnoxious behaviour of bullies will be met with the severest of penalties.

[2] The maximum imprisonment of three years under s. 324, of the Penal Code should be imposed on a very bad case where violence with a dangerous weapon was used and the attacker had claimed trial and was found guilty.

[Imposition of fine set aside and replaced with four months imprisonment]

Cases referred to:
Ong Hwee Leong v. PP [1992] 1 SLR 794 ***(foll)***
R v. Hassan and Schuller [1989]1 RTR 129 CA. ***(foll)***
Mohamed Noor v. PP [1966] 2 MLJ 173 ***(foll)***

Legislation referred to:
Criminal Procedure Code, s. 323
Penal Code, s. 324

For the prosecution - Ganeson Somasundram; DPP
For the respondent - Gulam Mustapha; M/s. Gulam Mustapha & Co.

JUDGMENT

K.C. Vohrah J:

I called for the record of proceedings in this case under s. 323 of the Criminal Procedure Code after reading in one of the newspapers that a bully had used a chain to cause hurt to a woman in respect of a trivial traffic matter and that he had only been fined RM2,000 in default four months' imprisonment by a Magistrate after he had pleaded guilty to a charge under s. 324 of the Penal Code.

I have perused the record and I have studied the nature of the offence with which the respondent was charged, the facts which were presented to the Court by the prosecuting officer and which were admitted to by him and his plea in mitigation; and I have no hesitation in saying that the sentence that was passed on the respondent is manifestly inadequate.

The offence against the respondent is one under s. 324 of the Penal Code and the relevant part of the section reads:

> Whoever ... voluntarily causes hurt by means of ... any instrument which, used as a weapon of offence, is likely to cause death ... shall be punished with imprisonment for a term which may extend to 3 years, or fine, or with whipping or with any two of such punishments.

The respondent was charged with committing the offence under s. 324 of the Penal Code on 8 February 1996; that he voluntarily caused hurt to a woman, Tan Min Lan, by using an iron chain, an instrument which, used as a weapon of offence, was likely to cause death.

On 11 April 1996 he was brought to Court and he pleaded guilty to the charge.

The facts presented by the prosecutor are these. On 8 February 1996 at about 6.20 p.m. Tan Min Lan stopped her motor-car near a fruit stall at Jalan Besar, Setapak Jaya, Kuala Lumpur and her elder sister, the complainant, went out to purchase some fruit. The respondent who was riding a Honda-Cub motor-cycle stopped at the rear of Tan Min Lan's car and hooted several times. Tan Min Lan then moved her car slightly forward but the respondent was still not satisfied and an argument broke out between the complainant and the respondent. The respondent suddenly tried to take a knife to attack the complainant but he was stopped by the members of the public there. The respondent then walked to his motor-cycle and took out an iron chain wanting to hit the complainant with it. Tan Min Lan went to her aid and the respondent hit Tan Min Lan's back and also pushed her down on to the road after which he ran away. As a result of the attack Tan Min Lan was injured on the back and received out-patient treatment at the Hospital Kuala Lumpur. The respondent was arrested the next day and he surrendered one iron chain about 2 1/2 feet long with a padlock fastened at one end. The respondent admitted hitting Tan Min lan with the iron chain.

The chain which I have seen is about 2 1/2 feet long and is a heavy duty chain with a large padlock fastened to one end of it. It certainly can cause death. The chain with the padlock was probably meant to secure the respondent's motor-cycle against theft.

The facts clearly reveal that the respondent was very aggressive and violent arising from a trivial dispute relating to some traffic obstruction on the road. His extreme aggressiveness was shown by his having attempted to take a knife

to use it on the complainant which but for the timely intervention of the crowd would have probably resulted in the complainant suffering serious injury inflicted by the cutting instrument. The respondent continued his aggressive behaviour by deliberately walking to his motor-cycle to take the 2 1/2 feet chain, intending to attack the complainant. He deliberately vented his anger on the complainant's sister by hitting her with the chain on the back and pushing her down on the road.

The medical report shows that the woman suffered injuries - abrasions - on the back of her neck and left scapula. The report states that at the time of the assault she was two months' pregnant.

Courts can take judical notice that cases of aggression on our roads, most of the times over trivial matters, have become far too frequent. Defenceless victims in addition to being terrorised are brutally punched, kicked, knocked about or attacked with lethal instruments by bullies. The present state of affairs calls for strong and firm handling by our Courts of these bullies so that clear signals are sent out that the dangerous and obnoxious behaviour of bullies will be met with the severest of penalties.

In *Ong Hwee Leong v. PP* [1992] 1 SLR 794 Yong Pung How CJ dismissed the appeal of Ong who was sentenced to one week's imprisonment for getting out of his van and fisting in the face another driver who had annoyed him by switching on his headlights to high beam. He was charged under s. 323 of the Penal Code where the maximum sentence is one year's imprisonment or a liability to a fine or to a term of imprisonment and fine. In the High Court, Ong argued for a sentence of a fine instead of the term of imprisonment. Yong Pung How CJ dismissed the appeal.

As was observed by Yong Pung How CJ at p. 795 in respect of the appeal before him:

> This matter arose from what was certainly a trivial dispute. Such minor incidents occur on our roads many times every day. No doubt they are frustrating to those involved. But if, many times every day on our public roads, everyone were to lose his temper and react to the degree the appellant did, all semblance of order would quickly dissipate and only the most violent would prevail. The perceptible trend in this direction deservedly incurs the Courts' displeasure and must be determinedly discouraged. Drivers must refrain from alighting from their vehicles and assaulting others simply because those others have annoyed them by their driving in some other way. I therefore adopt unreservedly Lord Lane CJ's view in *Hassan & Schuller* that prison sentence ought to follow this sort of incident.

In *R. v. Hassan and Schuller* [1989] RTR 129, CA (see Archbold 1994 Vol. 2 (Re-Issue) 19-196) the defendants had been the occupants of one car. They assaulted the driver of another car by punching him in the face a total of four times before the police intervened. The assault arose out of an altercation over a parking place: the defendant who was driving had

manoeuvred his car in such a way as to prevent the victim who had arrived first from reversing into the space. The defendant had then taken the space himself. Lord Lane CJ, delivering the judgment of the Court, said that generally speaking, such a comparatively trivial incident ending in blows would be properly the subject of a fine and, or a compensation order.

However, the habit of drivers getting out of their cars, losing their tempers and striking other road users seemed to be a phenomenon which unhappily was increasing. It had to be realised that drivers must not get out of their vehicles and assault others who might have caused aggravation by their driving or in any other manner. The Judge was correct to indicate the displeasure of the Court by imposing a prison sentence. If that kind of incident occurred, a prison sentence would follow.

In our case the offence with which the respondent was charged with is not one under s. 323 for causing simple hurt but under 324 for causing hurt with a lethal weapon and the punishment is imprisonment up to 3 years, or with fine, or with whipping or with any two of such punishment. In *Mohamed Noor v. PP* [1966] 2 MLJ 173, Mohamed Noor appealed against a sentence of two years imprisonment for an offence under s. 324 where he used a kris, an instrument for cutting, to cause injury on a person. Abdul Aziz J (as he then was) dismissed the appeal and one of the grounds he considered was the prevalence of offences of violence of such nature in the state concerned.

There is hardly a week that passes by without reports of violent attacks by aggressive road users on other road users. A stop must be put to these attacks. And that can only be done by our Courts if exemplary sentences are meted out to deter such brutish behaviour.

In order to do substantial justice in this case I have to act to enhance the manifestly inadequate sentence in this case. In all the circumstances of this case a fine is not a suitable sentence. I would reserve the maximum of 3 years for a person on a very bad case where violence with a dangerous weapon is used if the person had claimed trial and was found guilty. The accused in this case pleaded guilty and I have to take that into account when revising the sentence. I have also to consider that he is 60 years old and that he was fasting during that day in the month of Ramadhan. In all the circumstances of the case he should have been sentenced to 4 months' imprisonment instead of being fined. I set aside the fine of RM2,000 and sentence him to 4 months' imprisonment as from today. The fine is to be refunded to him.

Reported by Akbardin Abdul Kader